

Analysis of Interfaith Marriage Registration in Indonesia: A Review of Regulations and Judicial Practices Post- Supreme Court Circular Letter Number 2 of 2023

Sari Nurdiani¹, Suartini^{2*}

¹ Universitas Al-Azhar Jakarta, Indonesia

² Universitas Al-Azhar Jakarta, Indonesia

*Corresponding Author: sarinurdiani16@gmail.com

Article History :

Submitted:

21-12-2023

Received:

24-01-2024

Accepted:

15-02-2024

Keywords :

interfaith marriage;
registration of
interfaith marriages;
religious diversity

Abstract

Interfaith marriage has long been a reality in Indonesia's multicultural society. As experienced by celebrity couple Jamal Mirdad and Lydia Kandou, it has been a subject of debate among both the public and legal experts, illustrating the complexity of marriage laws in Indonesia. SEMA No.2/2023, was issued with the hope of ending the polemic, but it instead sparked controversy as it was considered inconsistent with the law, violating the principles of religious freedom and the constitutional rights of citizens and diversity. This research aims to understand the regulations regarding interfaith marriages in Indonesia and explore the court's practices in handling cases of interfaith marriages before and after the issuance of SEMA No.2/2023. A normative juridical research method is employed in this academic work, using two main approaches: the statute approach to examine relevant legal regulations and the analytical approach focused on data analysis and interpretation. The research findings indicate the need to harmonize and clarify the regulations governing the recording of interfaith marriages in Indonesia to put an end to the polemic. Although SEMA No.2/2023 was issued as a guide for judges in deciding on the recording of interfaith marriages, there are still court decisions approving applications for the recording of interfaith marriages after the issuance of SEMA.

1. Introduction

Interfaith marriages have long been a reality in Indonesia's multicultural society.¹ Indonesia, with its diversity in religion and beliefs, stands as an example of a nation rich in social and cultural diversity. This diversity is manifested through the recognition of six main religions: Islam, Christian, Catholic, Hindu, Buddhist, and Confucian. The Indonesian Constitution officially guarantees freedom of religion and belief through Article 29 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945), stating: "The state is based on the belief in the One and Only God and guarantees each residents the freedom to embrace their respective religions and worship according to their beliefs and religions." This fact reflects the country's commitment to the principle of religious pluralism, providing a foundation for tolerance and social development in Indonesia.

Interfaith marriage has become a sustained social phenomenon in Indonesia, with compelling stories such as the celebrity couple Jamal Mirdad and Lydia Kandou serving as one of the most notable examples. In 1986, Jamal Mirdad, who embraced Islam, online married Lydia Kandou, a follower of Christianity. Despite facing difficulties, the couple decided to stay married in Indonesia and sought official recognition through legal processes. Their lengthy

¹ Ulil Amri, " Interfaith Marriage According to Law Positive and Islamic Law ," *Media Syari'ah Vehicle for the Study of Islamic Law and Institutions Social* 22, no. 1 (2020), <https://jurnal.ar-raniry.ac.id/index.php/medsyar/article/view/6719/4106>.

journey and struggle to legalize their marriage finally succeeded in 1995, when their marriage was officially recognized by the court.

This phenomenon does not only occur among celebrities but also involves the general public, such as what happened to Widana Made, a follower of the Hindu religion, who also shared her experience of her marriage to a Muslim woman named Yuliana Prihandari, who is Muslim. Yuliana, the wife, was willing to carry out the marriage according to Hindu traditions and take part in the Sudhi Wadani ceremony as part of her conversion to Hinduism. After this process, they completed the marriage administration at Parisadha Hindu Dharma Indonesia (PHDI).² With a letter of support from PHDI, Made and Yuli managed to get a marriage certificate from the civil registry office.³ The struggle of this interfaith couple reflects the social reality where religious pluralism has become an integral and challenging aspect to separate from the daily lives of Indonesian people.

Interfaith couples often face various obstacles when they want to legalize their marriage in Indonesia; the examples above only cover a small part of the challenges frequently faced. This is because although Indonesia has implemented Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (hereinafter referred to as Law No.1/1974) which regulates marriage, this law does not yet provide firm and clear provisions regarding interfaith marriages. In other words, there are no provisions that explicitly regulate, legalize, or prohibit interfaith marriages, thus causing ambiguity in the legal realm. As a result, interfaith couples often have to face a challenging struggle, both through legal and illegal means, to have their marriage officially recognized in Indonesia. Interfaith couples often face various obstacles when they want to legalize their marriage in Indonesia; the examples above only cover a small part of the challenges frequently faced. This is influenced by the fact that so far Indonesia has not had clear and definite regulations regarding the issue of interfaith marriages. As a result, interfaith couples often have to go through a challenging struggle, both through legal and illegal means, to have their marriage officially recognized in Indonesia. There are four general methods that are often chosen by interfaith couples who are getting married. First, they can submit a marriage application through the court. After this determination, the marriage can take place at the Civil Registry Office. However, this method is no longer valid since Presidential Decree No. 12 of 1983 was issued. The second alternative is to hold a marriage according to the procedures of each religion. A Hindu man can marry a Muslim woman at the prospective wife's residence who meets the wishes of the wife's Muslim family, with the woman reciting two sentences of the Shahada. Then, they can hold another wedding according to Hindu religious procedures at the home of the Hindu man's family. The challenge is to determine the validity of which marriage. If the second marriage is considered valid according to law, questions will arise about the status of the first marriage. Another method is to choose the partner's religious law. One of them can 'change religion' as a form of obedience to the chosen law. Finally, a method that has become popular recently is to hold a wedding abroad. Several famous people have chosen this option as a solution to the difficulties of marrying across religions in Indonesia. In addition, a court order is requested if an interfaith couple wants to officially register their marriage. This is especially necessary when couples choose to marry according to different religious procedures, such as marrying first in Islam and then in

² Sindy Cantonia dan Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia", *Rewang Rencang: Jurnal Hukum Lex Generalis*. Vol.2. No.6 (Juni 2021), <https://jhlg.rewangrencang.com/>.

³ Daud Rismana, Hariyanto, Rifi Maria Laila Fitri Permonoputri, Intan Ayu Nur Laili, Hajar Salamah Salsabila Hariz, "Dispensasi Izin Perkawinan Beda Agama Di Indonesia", *Humani (Hukum dan Masyarakat Madani)* Volume 12 No. 2 November 2022 Halaman 390-400, <https://journals.usm.ac.id/index.php/humani/article/view/5393/pdf>.

Christianity, without the need to change religions and convert again. In this situation, a court order is required to validate their marital status. An exception to requesting a court order occurs when the couple chooses to maintain their faith and does not want to undergo two marriage procedures. For example, if they choose to marry directly to another religion, such as Islam or Buddhism, they will ask the court first before registering it with the civil registry.⁴

The high number of interfaith marriages in Indonesia indicates the urgency of having clear and explicit legal regulations. This is aimed at avoiding uncertainty and legal gaps that could lead to confusion in the future. Not only that, but this legal uncertainty also provides room for various interpretations among judges, ultimately resulting in inconsistency in court decisions. To resolve differing opinions regarding interfaith marriages, Supreme Court Circular Letter Number 2 of 2023 concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs (hereinafter referred to as SEMA No.2/2023) was issued to provide more detailed guidance to judges in handling such cases. This regulation contains provisions that explicitly prohibit judges from approving applications for interfaith marriages, referring to Article 2 paragraph (1) and Article 8 letter f of Law No.1/1974.

Responses to the issuance of this SEMA No.2/2023 vary among the public, including legal experts. Some argue that SEMA No.2/2023 is in line with the spirit of Article 2 paragraph (1) and Article 8 letter f of Law No.1/1974. However, there is also an opinion that SEMA's policy has the potential to contradict Article 38 Letter (a) of Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration (hereinafter referred to as Law No.23/2006), which states that: "People of various religions or beliefs can marry into marriages recognized by the court." Some see it as a step backward in legal efforts to protect the rights of religious diversity among citizens. Furthermore, SEMA No.2/2023 is considered inconsistent with the spirit of pluralism and the values of Pancasila, which form the foundation of life for the Indonesian nation.⁵

Previous research conducted by Mahadi Abdullah, Faisal Sarifudin, Mochammad Rizky Maulana, and Dian Latifiani, entitled "Analysis of Interfaith Marriages in the City of Semarang: A Study After the Issuance of Sema Number 2 of 2023," contains issues regarding the legality of marriage in Law No.1/1974 still raises many interpretations, opening up opportunities for the practice of interfaith marriages. Even though the Supreme Court has issued SEMA No.2/2023 for judges to grant requests for interfaith marriages, the research shows that this practice still occurs in Semarang City, as per the results of interviews with the Head of the Marriage and Divorce Section of the Semarang City Dukcapil. In this context, this research focuses more on the regulatory aspects of interfaith marriages in Indonesia and reviews implementation practices in courts through analysis of decisions regarding applications for registration of interfaith marriages before and after the issuance of SEMA No.2/2023⁶.

Further research was conducted by Muharrir, Jefrie Maulana, and Muhammad Nahyan Zulfikar with the title "Legal Strength of Supreme Court Circular Letter Number 2 of 2023

⁴ Prasetyo Ade Witoko, Ambar Budhisulistiyawati, "Penyelundupan Hukum Perkawinan Beda Agama Di Indonesia", *Jurnal Hukum dan Pembangunan Ekonomi*: Vol 7, No 2 (2019), <https://jurnal.uns.ac.id/hpe/article/view/43015/27664>.

⁵ Endang Hadrian, "Still a problem Interfaith Marriage: SEMA Number 2 of 2023 Has Become Law for Every Citizen," *Hukumonline.com*, 2023, <https://www.hukumonline.com/berita/a/masih-soal-perkawinan-beda-agama-lt653e1a1a7cfcb/?page=2>.

⁶ Mahadi Abdullah et al., "Analysis Interfaith Marriage in Semarang City: A Review After Release Sema Number 2 of 2023," *Journal Law and Citizenship* 1, no. 4 (2023), <https://ejournal.warunayama.org/index.php/causa/article/view/817/788>.

concerning Instructions for Judges in Adjudicating Cases on Applications for Registration of Marriages Between People of Different Religions and Beliefs, investigating how the Supreme Court", as the judiciary can regulate aspects that are inadequate in the law, by referring to SEMA No.2/2023. Their research focuses on understanding the role and authority of the Supreme Court in dealing with the issue of interfaith marriage. Meanwhile, this research focuses more on the complexity of interfaith marriage regulations and explores how SEMA No.2/2023 influences decisions at the court level ⁷."

Lastly, research conducted by Bintang Ulya Kharisma entitled "Supreme Court Circular Letter (SEMA) Number 2 of 2023, The End of the Polemic on Interfaith Marriages?", specifically examines the aspect of judges' obligations to comply with the provisions of SEMA No.2/2023. This research highlights the threat of sanctions given by the Supreme Court Supervisory Body if judges do not comply with these regulations. The focus lies on implementing the rules and the extent to which judges comply with the SEMA. Meanwhile, reviewing in more depth the complexity of the regulations for interfaith marriages and efforts to understand how SEMA No.2/2023 impacts Judicial Practice.⁸ By exploring the context of current legal issues, this research aims to analyze regulations related to interfaith marriages in Indonesia, especially in Law No.1/1974 and Law No.23/2006. Apart from that, the research will also examine judicial practices regarding the registration of interfaith marriages after the publication of SEMA No.2/2023. This is important to assess the clarity and suitability of these regulations to meet the needs of an increasingly diverse society, as well as to identify potential deficiencies or inconsistencies that require modification or improvement. Understanding judicial practices in handling interfaith marriage cases is also important to provide an overview of the implementation of regulations in the field, assist in identifying the challenges faced by the parties involved, and understand the impact of court decisions on their lives. It is hoped that the information obtained from this research can become a basis for recommending further improvements or adjustments in the justice system regarding interfaith marriages in Indonesia.

2. Methods

This research adopts a normative juridical approach within the legal framework, employing two main methods: a legislative approach to evaluate legal regulations and an analytical approach for in-depth analysis of data. The aim is to understand the cause-and-effect relationships, structure, and meaning of the investigated phenomenon. The study integrates primary legal sources (laws) and secondary legal materials (legal literature, scholarly articles, Supreme Court decisions) to explore the legal aspects of interfaith marriages. The research results are presented descriptively with background, methodology, findings, discussion, and conclusion, providing a comprehensive insight into the issue.

3. Results and Discussion

3.1. Regulation of Interfaith Marriages in Indonesia

⁷ Muharrir, Jefrie Maulana, and Muhammad Nahyan Zulfikar, "Strength Circular Law _ Supreme Court Number 2 of 2023 Concerning Instruction For Internal Judges Judge Case Application Recording Marriage Between People of Different Religions and Beliefs," *Ius Civile: Reflection Enforcement Law And Justice* 7, no. 2 (2023), <http://jurnal.utu.ac.id/jcivile/article/view/8462/4235>.

⁸ Ulya Star Kharisma, "Circular Letter Supreme Court (Sema) Number 2 of 2023, End of Polemic Interfaith Marriage?," *Journal of Scientech Research and Development* 5, no. 1 (2023), <https://idm.or.id/-JSCR/index.php/JSCR>.

The contradiction regarding marriages between followers of different religions continues to be a perplexing issue. Despite Indonesia having established Law No.1/1974 as the legal foundation for marriage, its implementation still poses several challenges.⁹ One of the shortcomings observed in this Law No.1/1974 is its ambiguity concerning marriages between adherents of different religions. To date, there has been no explicit regulation that clarifies whether interfaith marriages are permitted or prohibited.¹⁰

Before the birth of Law No. 1/1974, regulations regarding mixed marriages are regulated in *Regeling op de Gemengde Huwelijk Stbl.* 1898 Number 158, which is better known as the Mixed Marriage Regulations. At that time, Indonesian society was divided into several groups, including Chinese, eastern foreigners, natives, and Europeans. Each of these groups had different treatment under Dutch colonial rule. *Regeling op de Gemengde Huwelijk* are regulations governing mixed marriages, and in the context of colonial history, treatment of mixed marriages can also vary depending on the ethnic or racial group. For example, intermarriages between Europeans and natives may be governed by different provisions than intermarriages between two native groups. However, since Indonesia's independence in 1945, human rights principles have been recognized as integral to the Indonesian constitution. It is stated in the Preamble to the 1945 Constitution that "Independence is the right of all nations and therefore, colonialism in the world must be abolished because it is not following humanity and justice." This confirms Indonesia's commitment to respect and protect human rights for all Indonesian citizens without discrimination. Thus, constitutionally, the GHR applies to all groups of society in Indonesia.

Within this GHR, it is explained that mixed marriages refer to unions between individuals subject to different laws in Indonesia, including marriages between individuals with different religious beliefs. Regulations concerning interfaith marriages are stipulated in the Royal Decree dated December 29, 1896, Stb.1898 No.158 better known as the Regulation on Mixed Marriages (*Regeling op de Gemengde Huwelijken*).¹¹ Article 1 of the GHR states that:¹²"Marriages conducted by individuals in Indonesia who are subject to different legal systems are referred to as mixed marriages." Furthermore, Article 7 paragraph (2) of the GHR states: "Differences in religion, social class, or descent cannot be an obstacle to entering into marriage." The GHR regulation allows interfaith marriages to take place in Indonesia without obstacles.¹³

The current question is whether the current GHR is still valid. In the context of the laws that were in effect before Law No.1/1974, it is important to refer to the closing article of the law, namely Article 66. This article states that marriage and all anything related to marriage is

⁹ Constitution About Marriage, Law No. 1 year 1974, LN No. 1 of 1974, TLN No. 3019, Explanation General Number 2," 1974.

¹⁰ Made Prilita Saraswati Putri Indrawan and I Gede Artha, "Settings Interfaith Marriage in Indonesia," *Journal of Science Law* 7, no. 3 (2019), <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/52705>.

¹¹ Maryam Laomo, Ronny Adrie Maramis, and Grace Yurico Bawole, "Analysis Juridical Interfaith Marriage Against Decision Court Constitution no. 68/ Puu -Xii/2014 Top Article 2 Paragraph (1) Law No.1 of 1974," *Journal Faculty Law Sam Ratulangi University Lex Privatum* 12, no. 2 (2023), <https://ejournal.unsrat.ac.id/index.php/lexprivatum>.

¹² Nederlandsch Indie (Indies Netherlands), *Reglement Op de Gemengde Huwelijken (GHR - Regulations About Marriage Mixture)*. *Koninklijk Besluit van 29 December 1896 (King's Decree)*, No.23 – Stb. 1898 No. 158, 1898.

¹³ Cindy Cantonia and Ilyas Abdul Majid, "Overview Juridical to Interfaith Marriages in Indonesia Perspective Constitution Marriage and Rights Asasi Humans," *Journal Lex Generalis Law* 2, no. 6 (June 2021): 514, <https://www.rewangrencang.com/ojs/index.php/JHLG>.

regulated by this Law, then with the enactment of this Law, the provisions regulated in the Civil Code (*Burgerlijk Wetboek*), the Indonesian Christian Marriage Ordinance (*Huwelijks Ordonantie Christen Indonesiers S. 1933 No.74*), Mixed Marriage Regulations (*Regeling op de gemengde Huwelijken S. 1898 No.158*), and other regulations governing marriage, as long as they have been regulated in this Law, are declared invalid. Even though it is visible to the naked eye that the GHR has been declared invalid with the existence of Law No.1/1974, if look more closely at the last phrase of Article 66, it can be concluded implicitly: "as long as these provisions have not been regulated in this Law, then the regulations "This still applies as far as matters that have not been regulated in the Marriage Law are concerned." This means that provisions that have not been regulated in the Marriage Law still refer to previously existing regulations. In the context of interfaith marriages that have occurred and been recorded, especially regarding the law that applies to the bride and groom and saving their marriage, it still refers to the GHR.¹⁴

After the existence of Law No.1/1974, the regulations regarding interfaith marriages were stated in Article 2 paragraph (1) which states that, "Marriage is valid if it is carried out according to the laws of each religion," however the text of this article is considered vague and not specific in regulating marriage different religions, giving rise to at least three different interpretations:¹⁵

The first interpretation states that Law No.1/1974 does not explicitly regulate interfaith marriages. This is because the article only addresses mixed marriages, referring to the union of two individuals in Indonesia subject to different laws due to differences in nationality, not religion. This interpretation is reinforced by the Supreme Court Decision on Number: 1400K/Pdt /1986, which provided a legal solution for interfaith marriages by deciding that interfaith marriages are acceptable. The only place that can accept applications from two prospective spouses who are not Muslims is the Civil Registry Office.

The second interpretation states that Law No.1/1974 allows interfaith marriages since there is no clear prohibition in it. In cases of interfaith marriages, a valid marriage is one conducted by the religious rules embraced by the prospective husband or wife. Marriages that do not conform to the religion embraced by both prospective spouses and their families are not allowed.

The third interpreter believes that interfaith marriages are prohibited by this law. Article 2 paragraph 1 jo Article 8 letter f of Law No.1/1974 states that "Marriage is valid if performed according to the religious laws and beliefs of each couple." Thus, "for Muslims, there is no possibility of marrying in violation of their religious laws," and the same applies to followers of the Christian, Catholic, Hindu, Buddhist, and Confucian religions.

The various interpretations mentioned above illustrate the complexity and ambiguity of the law regarding interfaith marriages in Indonesia. Legal updates are crucial to provide clarity in the context of interfaith marriages. This is reflected in the differing opinions of legal experts and interpretations of the current regulations. The lack of clarity in the regulations on interfaith marriages creates a void in legal norms.

Efforts to address this issue are carried out through Article 35 letter Law of the Republic of Indonesia Number 24 of 2013 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration (hereinafter referred to as Law No.24/2013 jo Law No.23/2006). Since the enactment of Law No.24/2013 jo Law No.23/2006, the opportunity to legalize interfaith marriages seems to be increasing. This is due to the option

¹⁴ Bimasakti, Muhammad Adiguna (2021) "Keabsahan Perkawinan Beda Agama Dan Kewenangan Mengadili Sengketanya Dalam Perspektif Hukum Antar Tata Hukum Indonesia," *Journal of Islamic Law Studies*: Vol. 4: No. 1, Article 6. <https://scholarhub.ui.ac.id/jils/vol4/iss1/6>.

¹⁵ Muchammad Ichsan, *Completion Law Interfaith Marriage* (Yogyakarta: LP3M UMY, 2019).

of applying for interfaith marriage to the District Court, which has the authority to issue a decision granting permission to couples marrying with different religious beliefs. Furthermore, the court also guides the Civil Registry Office to record such interfaith marriages in the marriage registration.¹⁶

Article 35 of Law No.24/2013 jo Law No.23/2006 is closely related to the registration of marriages. Article 35, letter A regulates the registration of marriages, especially if the court recognizes an interfaith marriage. According to this provision, the registration of marriages must be carried out and recorded by the Population and Civil Registration Office after there is a court decision confirming the interfaith marriage. For married couples, the registration of marriage provides legal certainty as an Indonesian citizen, making it a crucial element in the marriage process.¹⁷ The certificate issued by the Civil Registry Office has significant legal force and binds all parties involved, providing legal certainty to citizens. Additionally, Article 2 of Republic of Indonesia Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as PP No.9/1975) regulates the registration of marriage by stating that marriages following Islamic teachings can be recorded at the Office of Religious Affairs, while for those who are not Muslims, registration can be done at the Civil Registry Office.¹⁸

To legitimize interfaith marriages, many District Courts refer to Article 35 of Law No.24/2013 in conjunction with Law No.23/2006. This reflects the crucial role of this article in resolving complex legal issues related to interfaith marriages. This article provides a relevant legal basis and is often used as a reference by judicial institutions to resolve legal ambiguities related to interfaith marriages.

3.2. Arrangements for Interfaith Marriages According to SEMA No.2/2023

SEMA No.2/2023, issued on July 17, 2023, guides judges in handling applications for the registration of marriages between individuals with different religious beliefs and convictions. The issuance of this regulation responds to criticisms of several decisions by the District Courts that granted permission for interfaith marriages. Its purpose is to create legal certainty and consistency in the court's handling of applications for the registration of interfaith marriages. Judges are instructed to refer to specific provisions outlined in this regulation.

The impact of SEMA No.2/2023 on the registration of interfaith marriages in Indonesia is very large. In this SEMA, there is an emphasis on Article 2 paragraph 1, and Article 8 Letter f of Law No. 1 of 1974 which confirms that a marriage is considered valid if it is regulated following applicable religious law. Although this shows respect for religious norms, concerns arise about the potential violation of citizen's human and constitutional rights. Where the right to marry and form a family is also guaranteed in Article 28B paragraph 1 of the UUD NRI 1945. Furthermore, the guarantee of protection for the right to freedom to marry can be found in Article 10 of Law Number 39 of 1999 concerning Human Rights (hereinafter referred to Law No.39/1999), which confirms that every individual has the right to form a family and continue

¹⁶ Kadek Widiatika, Ni Ketut Sari Adnyani, and Dewa Bagus Sanjaya, "Overview Juridical Interfaith Marriage Based on Constitution Number 16 of 2019 and Law Balinese Customs," *Journal Knowledge Sui Generis Law* 3, no. 3 (July 2023), <https://ejournal2.undiksha.ac.id/index.php/JIH/issue/view/128>.

¹⁷ Alifianti, S. D. S., Izzah, A. N., Zudin, M. F. H. F., Gunawan, A., & Ulya, Z.. (2023). Degradasi Otoritas KUA sebagai Lembaga Pencatatan Perkawinan Pasca Berlakunya SPTJM dalam Permendagri No. 9 Tahun 2016. *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, 4(1), 59-80. <https://doi.org/10.1-5642/mal.v4i1.241>

¹⁸ Erleni, " Legality Law Interfaith Marriage in Indonesia," *Lex Librum : Journal Knowledge Law* 9, no. 1 (December 2022), <https://lexlibrum.id/index.php/lexlibrum/article/view/715/pdf>.

the lineage through legal marriage.¹⁹ Apart from that, there is also the potential for inconsistency with Article 35 of Law No.24/2013 jo Law No.23/2006 which regulates the registration of marriages recognized by the court. This article provides the legality of interfaith marriages if there is a court decision that allows it. However, SEMA No.2/2023 expressly prohibits the registration of interfaith marriages, potentially limiting the provisions in Law No.24/2013 jo Law No.23/2006. While SEMA appears to be creating new regulations, it should only provide technical guidance to fill legal gaps, not create new laws juridically. The principle of legal independence is being debated because SEMA No.2/2023 is a guideline for judges in handling cases, including the registration of interfaith marriages. This raises questions regarding the independence of judges and the principle of the supremacy of law.

3.3. Judicial Practices in Deciding Applications for Interfaith Marriage Registration in Indonesia, Before and After the Issuance of SEMA No.2/2023

To observe the impact of SEMA No.2/2023 on court decisions, let's compare judicial practices before and after the issuance of the regulation. Data for this research was extracted from the Directory of Supreme Court Decisions over three years, spanning from 2022 to 2023. Within a one-year timeframe, this study analyzes four decisions related to applications for the registration of marriages between individuals of different religions, submitted before and after the issuance of SEMA No.2/2023. Here is a brief description of these four decisions:

a) Decision 916/ Pdt.P /2022/ PN.Sby, with the following chronology :²⁰

In this decision, the applicants are Rizal Adikara, a Muslim, and Eka Debora Sidauruk, a Christian. They got married in March 2023 according to the religious procedures they follow. Afterward, they informed the Surabaya City Civil Registration Office of their marriage plans. However, due to religious differences, their marriage request was rejected by the Surabaya City Civil Registration Office, and they were advised to obtain a court determination from the District Court. Finally, they decided to apply to the Surabaya District Court so that their marriage could be recorded after obtaining a determination. Resolutely, they upheld the decision to marry and maintain their respective religious beliefs. They referred to the legal principle stating that religious differences should not be an obstacle to marriage. They also cited specific precedents affirming the human right to enter into marriage despite differing religious beliefs.²¹

In this application, the Judge considered the provisions in Article 2 paragraph (1) of Law No.1/1974 and Article 10 paragraph (2) of PP No.9/1975, stating that "marriage is only valid if conducted according to the laws of each person's religion and belief." However, the Supreme Court Decision Number 1400 K/ Pdt / 1986, stated, "This provision only applies to marriages between two people who have the same religion." The explanation of Article 35 letter (a) Law No.24/2013 jo Law No.23/2006, states, "Marriages determined by the Court are marriages between people of different religions."

Thus, the Judge concluded that religious differences are not a hindrance to conducting a marriage. This is in line with Article 28B paragraph (1) of the 1945 NRI Constitution, which states, "Everyone has the right to form a family and continue their line

¹⁹ Sindy Cantonia dan Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia", *Rewang Rencang: Jurnal Hukum Lex Generalis*. Vol.2. No.6 (Juni 2021), <https://jhlg.rewangrencang.com/>.

²⁰"RI Supreme Court Decision Number 916/ Pdt.P /2022/ PN.Sby .," 2022.

²¹ Circular letter Supreme Court Number 2 of 2023 Concerning About Instruction For Internal Judges Judge Case Application Recording Marriage Between People of Different Religions and Beliefs , 2023.

through a legal marriage," furthermore, Article 29 of the 1945 NRI Constitution guarantees freedom of religion for all citizens.²²

Based on these considerations, the Judge granted their request to solemnize the marriage before the Surabaya City Civil Registration Office. The Court also instructed the officials to record their marriage in the Marriage Registration Register and efficiently issue the marriage certificate.

b) Decision 508/ Pdt.P /2022/PN Jkt.Sel, with the following chronology:²³

On June 23, 2022, Jaka Nugraha, a Muslim, and Devina Renata Sianipar, a Christian, filed a petition for the validation of their marriage, which they had registered with the Clerk of the South Jakarta District Court. Previously, they had undergone a wedding ceremony according to Christian church rites. The basis of their petition referred to Law No.1/1974 and Law No.24/2013 jo Law No.23/2006, which require a court decision to validate their marriage. Therefore, they needed a decision from the South Jakarta District Court so that their marriage record could be recorded at the South Jakarta Civil Registry Office. The petitioners requested the Panel of Judges to declare the validity of their interfaith marriage, grant permission to register the marriage, order the registration of the marriage; and determine the application fee for them.

The court's consideration was based on Article 2 paragraph (1) of Law No.1/1974 in conjunction with Article 10 paragraph (2) of PP No.9/1975, which states, "Marriage is only valid if conducted by the laws of each person's religion and belief." Nevertheless, the Panel of Judges also considered Article 1 of Law No.1/1974 connected with Article 35 letter (a) Law No.24/2013 jo Law No.23/2006. This article states, "Marriage can be recorded after obtaining a decision from the District Court." In addition, Article 36 Law No.24/2013 jo Law No.23/2006 explains that "If the marriage is not recorded, it is done to ensure the marital status of the Applicants and facilitate their registration at the Civil Registry Office."

Based on the above considerations, the Judge decided to partially grant their request by allowing them to register their marriage at the South Jakarta Civil Registry Office. The Judge also instructed the office to record their marriage in the applicable Marriage Registration Register. However, most of the other requests from the petitioners were denied.

c) Decision 155/ Pdt.P /2023/ PN.Jkt.Pst, with the following chronology:²⁴

The applicants, consisting of Joshua Evan Anthony, a Christian, and Stefany Wulandari, a Muslim, have been in a relationship for ten years. The decision to marry was made by respecting each other's religious beliefs. In January 2023, they informed the Central Jakarta Civil Registry Office of their wedding plans but faced rejection due to religious differences. Nevertheless, they continued with the marriage ceremony in a Christian church on March 3, 2023, documented in a church wedding blessing certificate. They referred to legal principles asserting that religious differences are not an obstacle to marriage, supported by specific jurisprudence. They hope that the Central Jakarta District Court can recognize the validity of their marriage following the principles of justice, certainty, and utility. This application includes the acknowledgment of the validity of the marriage, registration permission, marriage registration order, and a request for litigation costs.

In its consideration, the Court considered Article 10 paragraph (1) Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights (hereinafter referred to as Law No.39/1999) which states that "Everyone has the right to form a family and

²² The 1945 Constitution of the Republic of Indonesia, 1945.

²³ RI Supreme Court Decision Number 508/ Pdt.P /2022/PN Jkt . Cell. , 2022.

²⁴ RI Supreme Court Decision Number 155/ Pdt.P /2023/PN Jkt . Pst.,” 2023.

continue their descendants through a valid marriage and of their own will." The Court also acknowledged the religious diversity in Indonesia, considering interfaith marriages as something sociologically reasonable. The decision of Supreme Court no. 1400 K/ Pdt /1986, which allows interfaith marriages, was cited by the court.

The court concluded that the applicant's request was valid to protect human rights, fill legal gaps, and prevent the smuggling of social and religious values. Therefore, the court granted part of their request, allowing the registration of their marriage at the Central Jakarta Civil Registry Office. However, additional requests from the applicants were rejected. Finally, the applicants were ordered to pay litigation costs.

d) Decision 423/ Pdt.P /2023/PN Jkt.Utr, with the following chronology:²⁵

This decision was issued after the issuance of SEMA No.2/2023, involving the applicant, namely Gregorius Ageng Buyung Amoh (Catholic) and Regina Yasmina Augustine (Christian). Both agreed to marry and respect their respective religious beliefs in February 2023; they solemnized their marriage in a Christian ceremony. They then applied for the registration of their marriage, but it was rejected by the North Jakarta Civil Registry Office due to religious differences. In response, they filed a petition for the determination of the validation of the marriage registration to the North Jakarta District Court, to obtain recognition of the validity of the marriage, permission for the registration of an interfaith marriage, and an order for registration.

In the consideration, the judge explained that their marriage could not be considered an interfaith marriage because both still shared the same faith. They were married in the Catholic faith. Therefore, their application was deemed a valid marriage.

Furthermore, the judge considered Article 35 letter (a) of Law No.24/2013 jo Law No.23/2006, which states that "Marriages determined by the Court are marriages conducted between different faiths." Article 50 paragraph (3) of R Implementing Regulations of the President of the Republic of Indonesia Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration (hereinafter referred to as Permendagri No.96/2018) also states that "in the case of marriages between different faiths and marriages that cannot be proven by a marriage certificate, the marriage registration is carried out based on the court's determination." The judge concluded that, according to these regulations, their marriage could be recorded after the North Jakarta District Court issued its decision.

Taking those considerations into account, the North Jakarta District Court decided by granting both requests, declaring their marriage held on February 1, 2023, conducted in the Catholic faith, legally valid and allowing them to register their interfaith marriage at the Jakarta Civil Registry Office.

The issuance of SEMA No.2/2023 which expressly prohibits the registration of interfaith marriages is contrary to the principle of legal expediency. This is because the law emphasizes that the law must provide benefits to society by providing clarity and legal protection for individual rights, including rights related to interfaith marriage. Registration of interfaith marriages provides legal certainty and protection for married couples and provides the same legal rights as couples married within the same religion. Thus, prohibiting the registration of interfaith marriages can hinder access to legal rights for the couple, which should be part of the legal benefits mandated by law.

Apart from that, SEMA No.2/2023 statement which is a reference for judges in carrying out the judicial process is not in line with legal principles, such as judicial independence. With the SEMA provisions, judges are limited in their authority to decide or hear cases regarding applications for registration of interfaith marriages. Judicial independence should be one of

²⁵ RI Supreme Court Decision Number 423/ Pdt.P /2023/PN Jkt.Utr , " 2023.

the basic principles in a democratic society and has a very important role in maintaining the integrity of the law and protecting individual rights and freedoms. Judicial independence ensures that judges and courts can make fair and impartial decisions without being influenced by various factors, including the contents of SEMA No.2/2023.

Since the last decision granting interfaith marriages following the issuance of SEMA No.2/2023, there has been no decision granting or rejecting the application for registration of interfaith marriages.

4. Conclusions

The regulation of interfaith marriage registration in Indonesia needs to be harmonized and clarified to end the ongoing polemic. The religious diversity in Indonesia poses a legal challenge, especially in the context of marriages between individuals of different faiths, which is not explicitly regulated. The effort to address this issue is manifested through SEMA No.2/2023, aimed at providing more detailed guidelines to judges in handling cases of interfaith marriages with the hope of resolving the polemic surrounding this issue. Nevertheless, even after the issuance of SEMA, there are still court decisions approving applications for the registration of interfaith marriages. Therefore, further actions are necessary, such as revising Law No.1/1974, to achieve legal certainty, consistency in court decisions, and the protection of citizens' rights.

5. Acknowledgments

I would like to express my appreciation and gratitude to the Faculty of Law, Al-Azhar University Indonesia for the valuable guidance from the lecturers during this research. Their contributions and support have been an important foundation in increasing my understanding. Thank you for your dedication and great guidance.

6. Reference

- Abdullah, Mahadi, Faisal Sarifudin, Mochammad Rizky Maulana, and Dian Latifiani, "Analysis Interfaith Marriages in Semarang City: A Review After Release Sema Number 2 of 2023," *Journal Law and Citizenship* 1, No. 4 (2023). <https://ejournal.warunayama.org/index.php/causa/article/view/817/788>.
- Alifianti, S. D. S., Izzah, A. N., Zudin, M. F. H. F., Gunawan, A., & Ulya, Z.. (2023). Degradasi Otoritas KUA sebagai Lembaga Pencatatan Perkawinan Pasca Berlakunya SPTJM dalam Permendagri No. 9 Tahun 2016. *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, 4(1), 59-80. <https://doi.org/10.15642/mal.v4i1.241>.
- Amri, Ulil, "Interfaith Marriage According to Law Positive and Islamic Law", *Sharia Media Vehicle for the Study of Islamic Law and Institutions Social* 22, no. 1 (2020). <https://jurnal.ar-raniry.ac.id/index.php/medsyar/article/view/6719/4106>.
- Bimasakti, Muhammad Adiguna (2021) "Keabsahan Perkawinan Beda Agama Dan Kewenangan Mengadili Sengketanya Dalam Perspektif Hukum Antar Tata Hukum Indonesia," *Journal of Islamic Law Studies: Vol. 4: No. 1, Article 6*. <https://scholarhub.ui.ac.id/jils/vol4/iss1/6>.
- Cantonia, Cindy, and Ilyas Abdul Majid, "Review Juridical to Interfaith Marriages in Indonesia Perspective Constitution Marriage and Rights Asasi Man", *Journal Lex Generalis Law* 2, no. 6 (June 2021): 514. <https://www.rewangrencang.com/ojs/index.php/JHLG>.
- Daud Rismana, Hariyanto, Rifi Maria Laila Fitri Permonoputri, Intan Ayu Nur Laili, Hajar Salamah Salsabila Hariz, "Dispensasi Izin Perkawinan Beda Agama Di Indonesia", *Humani (Hukum dan Masyarakat Madani)* Volume 12 No. 2 November 2022 Halaman 390-400, <https://journals.usm.ac.id/index.php/humani/article/view/5393/pdf>.

- Erleni, "Legality Law Interfaith Marriage in Indonesia", *Lex Librum : Journal Knowledge Law* 9, no. 1 (December 2022). <https://lexlibrum.id/index.php/lexlibrum/article/view/71-5/pdf>.
- Falady, Nadzirotus Synthya, "Conflict in Marriage Norms of Different Religions Constitution Number 1 of 1974 Concerning Marriage Compilation Islamic Law and Law Number 23 of 2006 Concerning Administration Population", pa- probolinggo, 2022. <https://pa-probolinggo.go.id/article/Konflik-Norma-Perkawinan-Beda-Agama-dalam-UU-Utu-Nomor-1- Tahun-1974-tangan-Perkawinan-Kompilasi- Islamic-Law-and-Law-Number-23-of-2006-concerning-Population-Administration>.
- Hadrian, Endang, "Still a problem Interfaith Marriage: SEMA Number 2 of 2023 Has Become Law for Every Citizen", *Hukumonline.com*, 2023. <https://www.Hukumonline.com/berita/a/masih-soal-perkawinan-beda-agama-lt653e1a1a7cfcb/?page=2>.
- Ichsan, Muchammad, "Completion Law Interfaith Marriage", Yogyakarta: LP3M UMY, 2019.
- Indrawan, Made Prilita Saraswati Putri, and I Gede Artha, "Arrangement Interfaith Marriage in Indonesia." *Science Journal Law* 7, no. 3 (2019). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/52705>.
- Kharisma, Ulya Star. "Circular letter Supreme Court (Sema) Number 2 of 2023, End of Polemic Interfaith Marriage?", *Journal of Scientific Research and Development* 5, no. 1 (2023). <https://idm.or.id/JSCR/index.php/JSCR>.
- Laomo, Maryam, Ronny Adrie Maramis, and Grace Yurico Bawole, "Analysis Juridical Interfaith Marriage Against Decision Court Constitution no. 68/ Puu -Xii/2014 Top Article 2 Paragraph (1) Law No.1 of 1974." *Journal Faculty Sam Ratulangi University Law Lex Privatum* 12, no. 2 (2023). <https://ejournal.unsrat.ac.id/index.php/lexprivatum>.
- Muharrir, Jefrie Maulana, and Muhammad Nahyan Zulfikar, "Strength Circular Law _ Supreme Court Number 2 of 2023 Concerning Instruction for Internal Judges Judge Case Application Recording Marriage Between People of Different Religions and Beliefs", *Ius Civile: Reflection Enforcement Law and Justice* 7, no. 2 (2023). <http://jurnal.utu.ac.id/jcivile/article/view/8462/4235>.
- Nederlandsch Indie (Indies Dutch). *Reglement Op de Gemengde Huwelijken (GHR - Regulations About Marriage Mixture). Koninklijk Besluit van 29 December 1896 (King's Decree), No.23 - Stb. 1898 No. 158, 1898.*
- Prasetyo Ade Witoko, Ambar Budhisulistiyawati, "Penyelundupan Hukum Perkawinan Beda Agama Di Indonesia", *Jurnal Hukum dan Pembangunan Ekonomi: Vol 7, No 2* (2019), <https://jurnal.uns.ac.id/hpe/article/view/43015/27664>
- "RI Supreme Court Decision Number 155/ Pdt.P /2023/PN Jkt. Pst.," 2023.
- " RI Supreme Court Decision Number 423/ Pdt.P /2023/PN Jkt.Utr," 2023.
- RI Supreme Court Decision Number 508/ Pdt.P /2022/PN Jkt. Cell., 2022.
- "RI Supreme Court Decision Number 916/ Pdt.P /2022/ PN.Sby .," 2022.
- Circular letter Supreme Court Number 2 of 2023 Concerning Instruction for Internal Judges Judge Case Application Recording Marriage Between People of Different Religions and Beliefs*, 2023.
- 1945 Constitution of the Republic of Indonesia, 1945.*
- " Constitution About Marriage, Law No. 1 year 1974, LN No. 1 of 1974, TLN No. 3019, Explanation General Number 2," 1974.
- Sindy Cantonia dan Ilyas Abdul Majid, "Tinjauan Yuridis Terhadap Perkawinan Beda Agama di Indonesia Dalam Perspektif Undang-Undang Perkawinan Dan Hak Asasi Manusia", *Rewang Rencang: Jurnal Hukum Lex Generalis. Vol.2. No.6 (Juni 2021)*, <https://jhlgr.wangrencang.com/>.
- Widiantika, Kadek, Ni Ketut Sari Adnyani, and Dewa Bagus Sanjaya, "Review Juridical Interfaith Marriage Based on Constitution Number 16 of 2019 and Law Balinese

custom", *Journal Knowledge Sui Generis Law* 3, no. 3 (July 2023). <https://ejournal2.undiksha.ac.id/index.php/JIH/issue/view/128>.